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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

In re:  
  
BORREGO COMMUNITY HEALTH  
FOUNDATION,  
  
Debtor.

Case No. 22-BK-02384-LT11

Chapter 11

**STIPULATION BETWEEN THE  
DEBTOR AND U.S.  
DEPARTMENT OF HEALTH  
AND HUMAN SERVICES**

Borrego Community Health Foundation (the “Debtor”), and the Secretary (the “Secretary”) of the U.S. Department of Health and Human Services (“HHS”), on

1 behalf of the Centers for Medicare & Medicaid Services (“CMS,” and collectively  
2 with the Secretary, HHS and the Debtor, the “Parties”), by and through their respective  
3 counsel, enter into this Stipulation (the “Agreement”) resolving the following HHS  
4 objections: (i) *Opposition to Debtor’s Notice Of Motion And Motion For Entry Of (I)*  
5 *An Order (1) Approving Form Of Asset Purchase Agreement; (2) Approving Auction*  
6 *Sale Format And Bidding Procedures; (3) Approving Process For Discretionary*  
7 *Selection Of Stalking Horse Bidder And Bid Protections; (4) Approving Form Of*  
8 *Notice To Be Provided To Interested Parties; (5) Scheduling A Court Hearing To*  
9 *Consider Approval Of The Sale To The Highest And Best Bidder; And (6) Approving*  
10 *Procedures Related To The Assumption Of Certain Executory Contracts And*  
11 *Unexpired Leases; And (II) An Order Authorizing The Sale Of Property Free And*  
12 *Clear Of All Claims, Liens And Encumbrances* [Docket No. 206] (the “Sale  
13 Objection”); (ii) *Supplemental Opposition to Debtor’s Sale Motion* [Docket No. 491]  
14 (the “Supplemental Sale Objection”); and (iii) *Objection to Debtor’s Notice to*  
15 *Counterparties to Executory Contracts and Unexpired Leases of the Debtor that may*  
16 *be Assumed and Assigned filed on January 16, 2023* [Docket No. 458] (the “Cure  
17 Notice Objection”).

## 18 **RECITALS**

19 WHEREAS, on September 12, 2022, the Debtor filed a voluntary petition for  
20 relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).  
21 Since the commencement of its Case, the Debtor has been operating its business as a  
22 debtor in possession pursuant to §§ 1107 and 1108.

23 WHEREAS, the Debtor is a nonprofit Federally Qualified Health Center  
24 (“FQHC”) that provides health care services to low income and rural patients in San  
25 Diego and Riverside Counties through a system of eighteen clinics, two pharmacies,  
26 and six mobile units (collectively, the “Facilities”). In 2021, the Debtor provided  
27 approximately 386,000 patient care visits to over 94,000 patients. The Debtor’s  
28 services include comprehensive primary care, urgent care, behavioral health, dental

1 services, specialty care, transgender health, women's health, prenatal care, veteran's  
2 health, chiropractic services, tele-health, and pharmacy.

3 WHEREAS, FQHCs are federally designated entities that receive higher state  
4 payments to provide health care services to low-income and rural families and families  
5 in underserved communities with incomes below 200% of the poverty level. As an  
6 FQHC, the Debtor strives to deliver high quality, comprehensive, compassionate  
7 primary health care to people in the surrounding area, regardless of ability to pay.

8 WHEREAS, additional background regarding the Debtor, including an  
9 overview of the Debtor's business and additional events leading up to this Case, is set  
10 forth in the Declaration of Isaac Lee, Chief Restructuring Officer, in Support of  
11 Debtor's Emergency First Day Motions [Docket No. 7].

12 WHEREAS, Medicare is a federal health care program for people who are 65  
13 or older, certain younger people with disabilities, and people with end-stage renal  
14 disease. Medicare is administered by CMS, a federal agency that is part of HHS.  
15 Individuals who receive benefits under Medicare are referred to as Medicare  
16 "beneficiaries." Medicare enters into agreements with providers and suppliers to  
17 establish their eligibility to participate in the Medicare Program. Providers and  
18 suppliers complete a Medicare Enrollment Application (often called a Form CMS-  
19 855) whereby the providers and suppliers must certify compliance with certain federal  
20 requirements.

21 WHEREAS, the Debtor holds 41 Medicare provider numbers, 24 active and 17  
22 deactivated. CMS administers the funds Debtor receives under its Medicare Provider  
23 Agreements (the "Debtor's Medicare Provider Agreements"). CMS utilizes Medicare  
24 contractors National Governmental Services and Nordian Healthcare Solutions to  
25 assist it in administering the Debtor's Medicare Provider Agreements. Under the  
26 Medicare Provider Agreements, the Debtor must submit cost reports on an annual  
27 basis for each cost report year. Cost reports are due on or before the last day of the  
28 fifth month following the close of the Debtor's cost report year. 42 C.F.R. § 413.24.

1 CMS reviews the Debtor's cost report submission to make any necessary adjustments  
2 as required by section 1395g(a) of the Medicare statute.

3 WHEREAS, the Debtor has yet to submit the cost reports due for fiscal years  
4 ending in 2021 and 2022 (the "Open Cost Reporting Periods"). If a provider has failed  
5 to timely file an acceptable cost report, the regulations require that payment to the  
6 provider is immediately suspended in whole or in part until a cost report is filed and  
7 determined by the Medicare contractor to be acceptable. 42 C.F.R. § 405.371.  
8 Pursuant to regulations, HHS stopped paying the Debtor for treatments for Medicare  
9 beneficiaries after the Debtor did not file the cost reports due in 2021 and 2022. The  
10 outstanding cost reports are identified in the Declaration of Brian Flett and Exhibits  
11 1-9 attached thereto, at Docket No. 458. The Debtor estimates that it is owed more  
12 than \$2 million on unpaid Medicare services. These amounts are being withheld by  
13 CMS or by a Medicare contractor at CMS's direction (the "CMS Withheld Amount").  
14 Additionally, the Debtor continues to treat Medicare beneficiaries and bill Medicare  
15 accordingly but is not being paid for those services. Thus, the CMS Withheld Amount  
16 continues to increase.

17 WHEREAS, on November 10, 2022, the Debtor filed its *Debtor's Notice Of*  
18 *Motion And Motion For Entry Of (I) An Order (1) Approving Form Of Asset Purchase*  
19 *Agreement; (2) Approving Auction Sale Format And Bidding Procedures; (3)*  
20 *Approving Process For Discretionary Selection Of Stalking Horse Bidder And Bid*  
21 *Protections; (4) Approving Form Of Notice To Be Provided To Interested Parties; (5)*  
22 *Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest And*  
23 *Best Bidder; And (6) Approving Procedures Related To The Assumption Of Certain*  
24 *Executory Contracts And Unexpired Leases; And (II) An Order Authorizing The Sale*  
25 *Of Property Free And Clear Of All Claims, Liens And*  
26 *Encumbrances* [Docket No. 161] (the "Sale and Bidding Procedures Motion").

27 WHEREAS, on November 18, 2022, HHS filed its Opposition to the Sale and  
28 Bidding Procedures Motion [Docket No. 206].

1 WHEREAS, on December 2, 2022, the Debtor filed its *Omnibus Reply to*  
2 *Objections of (1) the U.S. Department of Health and Human Services, and (2) the*  
3 *California Department of Health Care Services, to Debtor's Bid Procedures Motion*  
4 [Docket No. 261] (the "Government Omnibus Reply").

5 WHEREAS, on December 3, 2022, the Committee filed its *Joinder of the*  
6 *Official Committee of Unsecured Creditors in Support of Debtor's Omnibus Replies*  
7 *to Oppositions to Debtor's Motion And Motion For The Entry Of (I) An Order (1)*  
8 *Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*  
9 *Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding*  
10 *Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be*  
11 *Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider*  
12 *Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related*  
13 *To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II)*  
14 *An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens*  
15 *And Encumbrances* [Docket No. 262].

16 WHEREAS, on December 7, 2022, the Court heard the Sale and Bidding  
17 Procedures Motion and approved the bid procedures (the "Bid Procedures") and sale  
18 process (the "Sale") of substantially all of the Debtor's assets (the "Assets"). The  
19 Court found that the HHS objection was premature and continued such objection to  
20 the hearing on the Sale (the "Sale Hearing").

21 WHEREAS, on December 19, 2022, the Court entered the *Court Modified*  
22 *Order (I) (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction*  
23 *Sale Format and Bidding Procedures; (3) Approving Process for Discretionary*  
24 *Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice*  
25 *to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider*  
26 *Approval of the Sale to the Highest and Best Bidder; and (6) Approving Procedures*  
27 *Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and*  
28

1 *(II) Authorizing the Sale of Property Free and Clear of All Claims Liens and*  
2 *Encumbrances* [Docket No. 321].

3 WHEREAS, on February 13, 2023, HHS filed an Objection to Debtor’s Cure  
4 Notice [Docket No. 458].

5 WHEREAS, on February 21, 2023, HHS filed the Supplemental Sale Objection  
6 [Docket No. 491] (collectively, with Docket Nos. 206 and 458, the “HHS Objection”).

7 WHEREAS, on February 24, 2023, the Debtor filed the (i) *Memorandum in*  
8 *Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of*  
9 *All Claims, Liens, and Encumbrances; (B) Authorizing the Assumption and*  
10 *Assignment of Designated Executory Contracts and Unexpired Leases; and (C)*  
11 *Granting Related Relief; Declaration of Isaac Lee* [Docket No. 506], and (ii) *Omnibus*  
12 *Reply in Response to the Objections to the Debtors Motion for Entry of an Order: (A)*  
13 *Authorizing the Sale of Property Free and Clear of All Claims, Liens, and*  
14 *Encumbrances; (B) Authorizing the Assumption and Assignment of Designated*  
15 *Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket  
16 No. 507]. This Memorandum explains that the Desert Aids Project d/b/a DAP Health  
17 (“DAP Health”) was the winning bidder on the Debtor’s assets at a purchase price of  
18 approximately \$50 million.

19 WHEREAS, on March 1, 2023, the Court held a hearing and approved the Sale  
20 to DAP Health as described in its tentative ruling [Docket No. 519]; an order  
21 approving the sale has not yet been entered. The Sale terms provide that DAP Health  
22 will close the Sale (the “Transfer Effective Date”) if and when, among other things,  
23 the Successor-In-Interest Request has been approved by the Health Resources and  
24 Services Administration.

25 WHEREAS, to resolve the HHS Objection, avoid unnecessary motion practice  
26 regarding HHS’s claims, and avoid any possible impediment to the Sale to DAP  
27 Health, the Debtor and CMS have reached an agreement.



1 NOW, THEREFORE, for good and valuable consideration, the receipt and  
2 sufficiency of which is mutually acknowledged by the Parties hereto, intending to be  
3 legally bound, but subject to approval by the Bankruptcy Court, the Parties agree as  
4 follows:

5 **AGREEMENT**

6 1. The recitals set forth above are incorporated herein by reference.

7 2. The Debtor agrees that it will: (a) transfer the Medicare Provider  
8 Agreements as executory contracts, pursuant to section 365 of the Bankruptcy Code,  
9 with the cure amount unliquidated pending submission of the two outstanding cost  
10 reports (collectively, the “Unfiled Cost Reports”) as well as any closing cost report  
11 (the “Final Cost Report”), and audit of those reports by the Medicare Administrative  
12 Contractor or CMS; (b) submit the Unfiled Cost Reports no later than April 30, 2023;  
13 and (c) allow CMS to hold the CMS Withheld Amount pending submission of the  
14 Final Cost Report which must be submitted by the Debtor through the Transfer  
15 Effective Date (the “Final Cost Report Period”) and completion of CMS’s post-  
16 payment audit(s) of the Final Cost Report involving services rendered and dates of  
17 service during the Final Cost Report Period.

18 3. The Debtor further agrees that CMS will be allowed to: (a) offset and/or  
19 recoup any overpayments for the Open Cost Reporting Periods asserted against the  
20 Debtor from the CMS Withheld Amount; and (b) to the extent that CMS asserts and  
21 identifies overpayments against the Debtor for the Open Cost Reporting Periods in  
22 excess of the CMS Withheld Amount, allow CMS to offset and/or recoup in the  
23 ordinary course of business, any such overpayments from ongoing payments from the  
24 Medicare program due to the Debtor for claims involving services rendered and dates  
25 of service prior to the Transfer Effective Date but otherwise during the Open Cost  
26 Reporting Periods.

27 4. For the avoidance of doubt, the cure amount (the “Cure Amount”) to be  
28 paid pursuant to section 365 of the Bankruptcy Code for Medicare overpayments

1 consists of and is limited to the CMS Withheld Amount, which funds shall constitute  
2 the sole remedies available to Medicare for the recovery of Medicare overpayments  
3 from Medicare claims for services rendered prior to the Transfer Effective Date.

4 5. DAP Health shall not be liable for any overpayments alleged to have been  
5 incurred by the Debtor prior to the Transfer Effective Date. This Settlement resolves  
6 all disputes between CMS and the Debtor arising out of the Medicare Provider  
7 Agreements. Notwithstanding the foregoing, CMS will have the right to seek payment  
8 of subsequently discovered overpayments or amounts due the Medicare program for  
9 the cost reporting period ending immediately preceding the Transfer Effective Date  
10 exclusive of the amounts already in the Cure Amount.

11 6. The Parties agree that the CMS Withheld Amount represents CMS's sole  
12 remedy for any claims for overpayment it holds against the Debtor occurring prior to  
13 the Transfer Effective Date with respect to the Medicare Provider Agreements  
14 currently in effect between the Debtor and the Secretary of the Department of Health  
15 and Human Services. The Parties further agree that CMS shall have no recourse  
16 against DAP Health for any claims, causes of action, or liability arising from acts or  
17 omissions of Debtor occurring prior to the Transfer Effective Date.

18 7. CMS further agrees that the overpayments recouped pursuant to this  
19 settlement are in full satisfaction, discharge, and release of any and all claims for  
20 overpayment CMS may have against the Debtor or DAP Health for the Debtor's  
21 Medicare obligations incurred on or before the Transfer Effective Date, whether such  
22 claims are known or unknown, liquidated, or contingent. This release of the Debtor  
23 includes the Debtor's current officers, directors, and employees with regard to any  
24 overpayment liability.

25 8. The Parties agree that the relevant CMS contractors will issue Notices of  
26 Program Reimbursement regarding the amounts owed to CMS or to Debtor. The  
27 Parties agree that if the Debtor does not agree with the determination of the CMS  
28



1 contractors, the Debtor may pursue the administrative remedies available to it under  
2 42 C.F.R. Part 405 Subpart R.

3 9. Within 15 calendar days of the Transfer Effective Date, Debtor will  
4 withdraw any appeals related to the Provider Agreements that are pending either  
5 administratively (including, but not limited to, appeals before the Provider  
6 Reimbursement Review Board (“PRRB”) or the Departmental Appeals Board) or  
7 before any Federal court, and agrees to not bring any further appeals thereafter,  
8 relating to events and cost-reporting periods prior to the Transfer Effective Date. If,  
9 upon notice, the Debtor fails to timely withdraw such appeals, this Agreement  
10 constitutes the consent of Debtor for counsel for the provider’s Medicare fiscal  
11 intermediary/Medicare Administrative Contractor or for CMS to file such a  
12 withdrawal(s) on its behalf.

13 10. The Parties agree that CMS will: (a) diligently process the change of  
14 ownership applications required for the transfer of the Medicare Provider Agreements.

15 11. The Parties agree that CMS will promptly, and in no event later than  
16 ninety (90) days following the completion of the review of the cost reports, remit to  
17 the Debtor, any balance owed to the Debtor of the Debtor’s Medicare underpayments  
18 after CMS offsets and/or recoups any overpayments from ongoing payments from the  
19 Medicare program due to the Debtor for claims involving services rendered and dates  
20 of service during the Open Cost Reporting Periods.

21 12. The covenants of the Parties herein shall be effective as of the Transfer  
22 Effective Date, provided that the Bankruptcy Court has approved the transfer of the  
23 Medicare Provider Agreements to DAP Health. For the avoidance of doubt, the rights  
24 provided herein constitute the sole remedies available to CMS and CMS cannot  
25 otherwise seek payment from or recourse against DAP Health and or against any of  
26 its assets, including, without limitation, any assets acquired by DAP Health from the  
27  
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1 Debtor, for liabilities or conduct arising from the period before the Transfer Effective  
2 Date.

3 13. The Debtor shall timely file terminating cost reports for the Facilities  
4 through the date immediately preceding the Transfer Effective Date; and DAP Health  
5 shall be responsible to file partial cost reports to cover the period from the Transfer  
6 Effective Date to the end of the fiscal period in which the Transfer Effective Date  
7 falls. CMS agrees that the recoupment and offset rights granted to CMS pursuant to  
8 Paragraphs 2-4 shall constitute a “cure” under § 365 of the Bankruptcy Code, and any  
9 otherwise applicable law, statute or regulation, of all outstanding financial defaults  
10 arising under or in connection with the Medicare Provider Agreements and the goods  
11 and services provided prior to the respective Transfer Effective Dates, and any  
12 corresponding requests for payment made thereunder (collectively, the “Cure”). In  
13 addition, the Cure fully satisfies, discharges, and constitutes a release of all claims,  
14 known or unknown, that CMS has or may have against DAP Health for liability or  
15 conduct arising under or in connection with the Medicare Provider Agreements for  
16 periods before the Transfer Effective Date; provided, however, that DAP Health shall  
17 succeed to the quality history associated with the relevant Medicare Provider  
18 Agreements assigned and shall be treated, for purposes of survey and certification  
19 issues, as if it is the relevant owner and no change of ownership occurred.

20 14. For the avoidance of doubt, as of the Transfer Effective Date, CMS is  
21 authorized to adjust all payments to DAP Health to account for any liabilities,  
22 overpayments or underpayments relating to services rendered on or after the Transfer  
23 Effective Date, subject to the applicable Medicare statute, regulations, policies, and  
24 procedures. Notwithstanding the foregoing, under no circumstances shall CMS adjust,  
25 offset, or recoup from any payments owing to DAP Health, or from any assets, on and  
26 after the Transfer Effective Date, or otherwise seek payment from DAP Health, for  
27 any liabilities related to periods before the Transfer Effective Date, including  
28

1 liabilities related to goods or services provided by the Debtor, or otherwise pursuant  
2 to or connected with the Medicare Provider Agreements related to periods prior to the  
3 Transfer Effective Date.

4 15. Effective upon the Transfer Effective Date, all claims of the Debtor and  
5 DAP Health against CMS for any liability arising under the Medicare Provider  
6 Agreements for periods and goods or services provided before the Transfer Effective  
7 Date, whether known or unknown, shall be satisfied, discharged, and released, except  
8 as otherwise expressly provided herein. Notwithstanding the foregoing or any other  
9 term herein, the Parties agree that the Debtor shall continue to be eligible to submit  
10 claims and receive Medicare reimbursement for services provided during the Open  
11 Cost Reporting Periods and the Final Cost Report Period. CMS acknowledges and  
12 agrees that claims will be submitted by the Debtor in the ordinary course, in some  
13 cases on and after the Transfer Effective Date. CMS acknowledges that any such  
14 claims will not be considered a “liability” satisfied, discharged or released under this  
15 Agreement.

16 16. Effective upon the Transfer Effective Date, the claims of CMS against  
17 the Debtor or DAP Health for any claim or liability arising under the Medicare  
18 Provider Agreements on or before the Transfer Effective Date, whether known or  
19 unknown, liquidated, or contingent, shall be satisfied, discharged, and released, except  
20 as otherwise expressly provided herein, and CMS waives the right to future  
21 reimbursements, payments, claims, or overpayments relating thereto. CMS agrees that  
22 routine claims adjustments will be handled in the ordinary course of business.  
23 Notwithstanding the foregoing, CMS shall have the right to seek payment of  
24 subsequently discovered overpayments or amounts due the Medicare program for the  
25 Open Cost Reporting Periods preceding the Transfer Effective Date; provided,  
26 however, that all such rights will be exercised exclusively by way of recoupment  
27 against the Debtor’s Medicare underpayments, and, only if exhausted, any claims  
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1 pending for services rendered by the Debtor prior to the Transfer Effective Date.  
2 Notwithstanding the preceding, however, in no event shall such claims adjustments,  
3 or subsequently discovered overpayments or amounts due to the Medicare program  
4 for the cost reporting period ending immediately prior to the Transfer Effective Date  
5 be recouped, withheld, or otherwise taken from amounts due to DAP Health or from  
6 any assets, or otherwise sought from or be the obligation of DAP Health.

7 17. As of the Transfer Effective Date, the Debtor, DAP Health and CMS,  
8 will consider all cost reporting periods ending on or before the Transfer Effective Date  
9 (“Closed Cost Years”) to be fully and finally closed in accordance with all applicable  
10 law, except as otherwise expressly provided for herein.

11 18. CMS shall not file or otherwise assert against the Debtor, DAP Health or  
12 their estates or any other person or entity or any of their respective assets or property  
13 (real or personal) any lien (“Lien”), or alleged offset, setoff or recoupment claim or  
14 any other claim (“Offset Claim”), regardless of the statute or other legal authority  
15 upon which such Lien or Offset Claim may be asserted, related in any way to any  
16 remaining prepetition amounts allegedly owed to CMS by the Debtor arising from or  
17 related to the Medicare Provider Agreements or other arrangements entered into prior  
18 to the Transfer Effective Date, other than as expressly provided in this Agreement.

19 19. Upon Court approval of this Agreement, CMS hereby waives any  
20 objections to the Sale and hereby acknowledges that it has no objections to the  
21 assignment of the Medicare Provider Agreements to DAP Health pursuant to the terms  
22 of the Sale, including as set forth in the respective Asset Purchase Agreement (the  
23 “APA”), which sets forth the terms for the Sale.

24 20. Notwithstanding any other provision hereof, CMS shall be entitled to  
25 audit or reopen the Facilities or the Debtor’s Medicare cost reports for the Closed Cost  
26 Years solely for the purpose of complying with any act of Congress requiring CMS to  
27 rely upon settled cost reports for the Closed Cost Years as a basis for adjusting Federal  
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1 payment rates to providers participating in Medicare. However, neither CMS, DAP  
2 Health, nor the Debtor shall use such adjustments to seek any further payments for the  
3 Closed Cost Years. CMS shall use such adjustments only to adjust payment rates to  
4 the Debtor or DAP Health for fiscal periods arising after the Closed Cost Years as part  
5 of adjustments in Federal payment rates applicable to all similarly situated providers  
6 participating in Medicare. Nothing in this paragraph shall waive or otherwise affect  
7 DAP Health's ability to appeal or otherwise challenge such adjustments and Federal  
8 payment rates on or after the Transfer Effective Date.

9         21. The Parties agree that for cost years beginning on or after the Transfer  
10 Effective Date, that, to the extent applicable, in accordance with and to the extent  
11 permitted under the Medicare statute, regulations, policies and procedures (including  
12 42 C.F.R. § 489.18), successor liability attaches to any claim arising under the  
13 Medicare Provider Agreements and payments to DAP Health (or any future assignee  
14 under the provisions of Medicare law) and will be adjusted (in accordance with 42  
15 U.S.C. § 1395g(a)) to account for prior overpayments and underpayments which  
16 arose, and are related to conduct, services rendered or claims or cost reports submitted  
17 for periods, on or after the Transfer Effective Date. Nothing in this Agreement waives  
18 or abrogates whatever rights, if any, CMS may have to recoup or offset against  
19 payments otherwise payable to DAP Health in connection with the Facilities, for  
20 periods on and after the Transfer Effective Date.

21         22. Upon the Transfer Effective Date, nothing in this Agreement as so  
22 ordered by the Court shall relieve or be construed to relieve DAP Health from  
23 complying with all procedures, rules and regulations of the Medicare program,  
24 including, but not limited to, (a) the requirement that they apply for and obtain  
25 HHS/CMS approval of a Change of Ownership by the filing of Form CMS 855  
26 applications to the applicable Medicare Administrative Contractor, (b) the  
27 requirement that CMS review and adjust as appropriate future payments to be made  
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1 under the Medicare Provider Agreements for periods on and after the Transfer  
2 Effective Date, (c) the requirement that DAP Health file annual cost reports, starting  
3 with the cost year beginning on the Transfer Effective Date, and (d) CMS's right to  
4 alter or amend the method of reimbursement to DAP Health in accordance with  
5 applicable law. Furthermore, upon the Transfer Effective Date, DAP Health succeeds  
6 to the quality history of the Facilities and shall be treated, for purposes of survey and  
7 certification issues, as if it is the relevant owner and no change of ownership occurred.

8         23. Nothing in this Agreement shall affect any obligations of CMS with  
9 respect to the processing of the assignment of the Medicare Provider Agreements, and  
10 CMS will process the assignment of the Medicare Provider Agreements in the  
11 ordinary course effective as of the Transfer Effective Date. However, as set forth in  
12 the CMS Program Integrity Manual at Chapter 10, Sections 10.2.1.4E and 10.6.22E,  
13 Medicare payments for all goods and services rendered both prior and subsequent to  
14 the Transfer Effective Date shall continue to be made to the Debtor, to the extent bills  
15 are submitted by or on behalf of the Debtor, while the assignment of the Medicare  
16 Provider Agreements and DAP Health's Change of Ownership applications are  
17 processed and until CMS approves the Change of Ownership applications and the  
18 assignment of the Medicare Provider Agreements. If requested by DAP Health, CMS  
19 agrees that from the Transfer Effective Date until the date that CMS approves the  
20 respective change of ownership submissions and the assignment of the Medicare  
21 Provider Agreements to DAP Health (and issues to DAP Health tie-in notices),  
22 payments are to be paid to the Debtor's lockbox accounts (which are already on file  
23 with Medicare), in the ordinary course.

24         24. Each Party hereto agrees that it fully participated in the drafting of this  
25 Agreement. The rule of law which provides that ambiguities will be construed against  
26 the drafting party in interpreting written instruments shall not be applicable to or used  
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1 in resolving any dispute over the meaning or intent of this Agreement or any of its  
2 provisions.

3 25. This Agreement is the full and complete agreement of the Parties, and  
4 this Agreement may not be modified or altered in any manner, except by written  
5 agreement of all the undersigned Parties hereto. The provisions of this Agreement  
6 supersede any prior understandings or agreements of the Parties.

7 26. This Agreement is binding upon the undersigned Parties, their  
8 successors, and assigns. Only the undersigned Parties may enforce this Agreement,  
9 and this Agreement creates no rights in any third parties other than DAP Health. The  
10 Parties acknowledge that DAP Health is intended to be, and is, a third-party  
11 beneficiary of this Agreement.

12 27. Any disputes regarding the rights, claims, defenses, obligations of the  
13 Parties to this Agreement hereunder shall be governed by federal law. The Bankruptcy  
14 Court has jurisdiction over any dispute arising from or relating to this Agreement.

15 28. Notwithstanding anything herein, this Agreement does not affect the  
16 rights, claims, and defenses of any Federal Agency other than CMS and its pending  
17 objection to the Debtor's proposed treatment of the Medicare Provider Agreements in  
18 the sale to DAP Health; its ability to recoup any overpayments made pursuant to the  
19 Medicare Provider Agreements currently in effect between CMS and the Debtor prior  
20 to the Transfer Effective Date; and the claim CMS filed in this bankruptcy (Proof of  
21 Claim No. 217). This Agreement is not intended to, and does not, constitute a release,  
22 waiver, or compromise of any claims against either the Debtor or DAP Health under  
23 the False Claims Act or otherwise within the authority of the United States Attorney's  
24 Offices or the Civil Frauds Section of the Commercial Litigation Branch of the United  
25 States Department of Justice, nor of any other civil, criminal, fraud, or tax claims.  
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1           29. The Parties executing this Agreement do so without admitting any fault  
2 or liability whatsoever. No term or condition of this Agreement is intended to be or  
3 shall be deemed or construed as an expression of fault or liability.

4           30. This Agreement, or any provision hereof, may not be waived, amended,  
5 or revoked, or the ongoing obligations of any Party terminated, except by a further  
6 writing signed by all such Parties and DAP Health.

7           31. This Agreement is the product of negotiation by and among the Parties,  
8 executed voluntarily and without duress or undue influence on the part of or on behalf  
9 of any Party hereto. Each of the Parties acknowledges that it has had the opportunity  
10 to be represented by its own independent counsel in connection with this Agreement  
11 and the transactions contemplated by or referred to in this Agreement. Hence, in any  
12 construction to be made of this thereof, the same shall not be construed against any  
13 Party.

14           32. The failure or delay on the part of any Party to enforce or exercise at any  
15 time any of the provisions, rights or remedies in this Agreement shall in no way be  
16 construed to be a waiver thereof, nor in any way to affect the validity of this  
17 Agreement or any part hereof, or the right of such Party to thereafter enforce each and  
18 every such provision, right or remedy. No waiver of any breach of this Agreement  
19 shall be held to be a waiver of any other or subsequent breach. No other Party, nor any  
20 agent nor any attorney of any other Party has made any promise, representation or  
21 warranty whatsoever, express or implied, not contained herein or therein concerning  
22 the subject matter hereof to induce said Party to execute or authorize the execution of  
23 this Agreement, and each of the Parties hereto further acknowledges that said Party  
24 has not executed or authorized the execution of this Agreement in reliance upon any  
25 such promise, representation or warranty not contained herein or therein.

26           33. Each Party shall pay its own attorneys' fees, costs and expenses in  
27 connection with the preparation, negotiation and execution of this Agreement.  
28


1           34. Subject to obtaining approval from the Bankruptcy Court, each Party  
2 hereto hereby represents and warrants to the other Parties that the undersigned  
3 representative of such Party has authority to execute this Agreement and to bind such  
4 Party to the terms hereof.

5           35. This Agreement may be executed in counterparts, which shall be  
6 considered as a single document. Furthermore, this Agreement may be executed by  
7 facsimile copy or other electronic means, and facsimile or other electronic signatures  
8 will be treated as original signatures.

9           IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be  
10 executed and delivered as of June 23, 2023.

11  
12 DATED: June 5, 2023

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

13  
14  
15 By:   
16 SAMUEL R. MAIZEL

17 *Counsel for*  
18 *Borrego Community Health Foundation*

19 DATED: June 23, 2023

20 RANDY S. GROSSMAN  
21 United States Attorney

22 By:   
23 LESLIE M. GARDNER

24 *Counsel for Creditor U.S. Department of*  
25 *Health and Human Services*